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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 737

WILLIAM THOMAS CARROLL, ET AL., PETITIONERS

v.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Petitioners, eight longshoremen, seek review of two orders of the court of appeals—one denying their application for leave to file a petition for a writ of mandamus against the United States District Court for the Northern District of California, Southern Division, and the other denying their application for leave to file a petition for a writ of prohibition against the same district court and the National Labor Relations Board (Pet. App. 1–2). The relevant facts may be summarized as follows:

Beginning in April 1964, petitioners and certain other longshoremen filed two actions in the United States District Court for the Northern District of California,

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Southern Division, alleging that they had wrongfully been deprived of employment opportunities and seniority status by the acts of the Pacific Maritime Association ("PMA"), their employer, and the International Longshoremen's and Warehousemen's Union, their collective bargaining representative. Both complaints alleged, *inter alia,* a breach of the collective bargaining agreement and invoked the district court's jurisdiction under Section 301 of the Labor-Management Relations Act, 29 U.S.C. 185. When the suits were filed, all of the plaintiffs were represented by Mr. Sidney Gordon. Some of the plaintiffs later substituted attorneys.

In July 1965, the district court dismissed the third amended complaint in the first action on the ground that the acts complained of involved, not a breach of the collective bargaining contract, but, if anything, unfair labor practices within the jurisdiction of the National Labor Relations Board. It denied an injunction in the second action for similar reasons (Pet. App. 17–19). Notices of appeal were filed by those plaintiffs who continued to be represented by Mr. Gordon. Thereafter, the district court granted the other plaintiffs leave to file a fourth amended complaint in the first action and to sever their action from that of the Gordon-plaintiffs.

Meanwhile, some of the plaintiffs filed with the Board unfair labor practice charges against PMA

and the Union, based on the same conduct involved in the district court actions. The Board's Regional Director refused to issue a complaint on the charges, and an appeal was taken to the General Counsel in Washington.

In August, 1965, the plaintiffs represented by Mr. Gordon applied to the court of appeals for a writ of mandamus to compel the district court to vacate the orders dismissing the third amended complaint and denying the injunction, and to proceed to trial on the third amended complaint. On August 13, 1965, the court of appeals denied this application (Pet. App. 1). Thereafter, those plaintiffs applied to the court of appeals for a writ of prohibition against both the district court and the Board, to bar the former from proceeding with the actions and the latter from considering the appeal from the Regional Director's refusal to issue a complaint. On September 7, 1965, the court of appeals denied this request (Pet. App. 2). The petition for certiorari seeks review of the orders of the court of appeals denying writs of mandamus and prohibition.

On September 24, 1965, the General Counsel of the Board sustained the Regional Director's refusal to issue a complaint (Pet. 27). Accordingly, insofar as the application for a writ of prohibition sought to bar the Board from considering that appeal, the matter is moot. Since this is the extent of the Board's inter-

est in the proceeding, we express no opinion on the other issues in the case.

Respectfully submitted.

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DECEMBER 1965.

U.S. GOVERNMENT PRINTING OFFICE: 1965

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